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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055020
Party	Plaintiff Tech Data Corporation
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Date	12/06/2012
Attachments	Petitioner's Reply 92055020.pdf (32 pages)(401535 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,553,646
Registered December 30, 2008
Mark: STREAMONE and Design

TECH DATA CORPORATION,

Petitioner,

v.

STREAMONE LLC,

Respondent.

Cancellation No. 92055020

PETITIONER'S REPLY TO RESPONDENT'S AFFIRMATION
RESPONDING TO PETITIONER'S MOTION FOR ENTRY OF SANCTIONS
IN THE FORM OF ENTRY OF JUDGMENT

Pursuant to Rule 2.120(g) of the Trademark Rules of Practice and 37 C.F.R. § 2.120(g), and TBMP § 527.01(a), Petitioner Tech Data Corporation ("Tech Data" or "Petitioner"), by its attorneys, Moses & Singer LLP, hereby replies to the Affirmation of Kenneth McCallion, counsel for Respondent StreamOne LLC ("Respondent"), dated November 16, 2012 ("McCallion Affirmation"). Tech Data requests that its motion for an order entering sanctions, in the form of entry of judgment sustaining the opposition be granted as Respondent has failed to comply with the Board's Order dated October 22, 2012 (the "Order").

FACTUAL BACKGROUND

On October 19, 2010, Tech Data filed an intent-to-use application for STREAM ONE, Serial No. 85/155,669, in connection with services in International Classes 35 and 42. On April 22, 2011, Tech Data filed an intent-to-use application for STREAMONE and design, Serial No. 85/302,406, in connection with services in International Classes 35 and 42. Office Actions were

issued thereafter by the respective Examining Attorneys for each application, refusing both applications claiming a likelihood of confusion with Respondent's registration for STREAMONE and design, Registration No. 3,553,646 in connection with "business consultation services" in International Class 35 (the "Registration"). Tech Data filed a Petition for Cancellation on January 5, 2012 (the "Petition"), alleging abandonment of the Respondent's mark and seeking cancellation of the Registration. Respondent filed its answer on February 13, 2012, denying the allegations in the Petition and asserting affirmative defenses.

The parties engaged in preliminary settlement negotiations between March and June 2012. *See* Affidavit of Deborah Shapiro, dated August 16, 2012, filed along with and in support of Petitioner's Motion to Compel Discovery ("August Shapiro Aff.") ¶ 2, already part of the record in this action. Tech Data served its initial disclosures pursuant to 37 C.F.R. §2.120(a)(2), Federal Rule of Civil Procedure 26(a)(1), and TBMP § 401.02 on May 24, 2012. *Id.* ¶ 3, Ex. A.

The last discussion between counsel took place by telephone on June 6, 2012. *Id.* ¶ 4. Counsel for Tech Data followed up with a telephone call to Respondent's counsel on June 14, 2012, and left a voice mail message. *Id.* After not hearing further from Respondent, Tech Data served upon Respondent its First Set of Requests for Production of Documents and Things ("Document Requests") and First Set of Interrogatories ("Interrogatories") via first class mail on June 26, 2012, with a courtesy copy sent to Respondent's counsel via e-mail the same day. *Id.* ¶ 5, Ex. B.

Respondent did not respond to either set of requests by July 31, 2012, as required under 37 C.F.R. § 2.120(a), Fed. R. Civ. P. 26 and 34, TBMP § 406.04(a). *Id.* ¶ 7. Likewise, Respondent had still not even served its initial disclosures as required under 37 C.F.R. § 2.120(a)(2), Fed. R. Civ. P. 26(a)(1), TBMP § 401.02. *Id.* ¶ 9. Counsel for Tech Data sent

Respondent's counsel an e-mail on August 9, 2012, inquiring as to when and if Respondent's responses would be forthcoming. *Id.* ¶ 7. Counsel for Tech Data followed up with a telephone call to Respondent's counsel on August 13, 2012, and left a voice mail message. Counsel for Tech Data received no responses to any of its communications to Respondent's counsel. *Id.* ¶ 8.

On August 16, 2012, Tech Data filed a Motion to Compel Discovery because of Respondent's failure to provide initial disclosures and responses to Tech Data's Document Requests and Interrogatories. *See* Petitioner's Motion to Compel Discovery, filed August 16, 2012, already part of the record in this action. Respondent did not respond to the Motion to Compel and the Board granted the Motion as conceded. Pursuant to the Board's Order, Respondent was allowed until November 8, 2012 to provide its initial disclosures and responses to Tech Data's Document Requests and Interrogatories. *See* Order at 1. Having received none of the required responses nor any other communication from Respondent or its counsel, on November 12, 2012, Tech Data filed its Motion for Entry of Sanctions in the Form of Entry of Judgment. *See* Affidavit of Deborah Shapiro in Support of Petitioner's Reply, dated December 6, 2012 ("December Shapiro Aff."), ¶ 4.

On November 20, 2012, counsel for Tech Data received service of an Affirmation, dated November 16, 2012, with purported responses to Tech Data's Document Requests and documents labeled as Exhibits A-I. No responses to the Interrogatories were included with the submission, nor were there any initial disclosures. *Id.* ¶ 5.

ARGUMENT

As stated in the Order, Respondent was "allowed until November 8, 2012, in which to provide its initial disclosures and complete responses to petitioner's interrogatories and document requests." Order at 1. Further, "[s]hould respondent fail to provide the ordered disclosures and responses, then petitioner's remedy will lie in a motion for entry of sanctions, in

the form of entry of judgment sustaining the opposition.” *Id.* at 2. Quite simply, Respondent failed to timely and fully comply with the Board’s Order and, as a result, judgment should be entered in Petitioner’s favor. Respondent’s Affirmation claims otherwise, however, asserting that its failure to comply with the Board’s Order and to fully respond to Petitioner’s discovery requests, now more than three-months overdue, were caused by the recent storms that hit the New York metropolitan area. *See* McCallion Affirmation ¶ 3.

We appreciate the issues created by the October 29th storm, especially since Counsel for Tech Data has its offices in New York City. *See* December Shapiro Aff. ¶ 6. However, it was well-known that the storm was coming and there was no doubt its impact could be severe. *See id.* and Ex. A. In any case, Respondent’s counsel does not claim hardship due to the October 29th storm, but, rather, claims that problems befell Respondent’s counsel on November 5, a week after the storm hit, and a few days prior to the Northeaster that affected the region on November 7. *See* McCallion Affirmation ¶ 3. The “disconnect” between the timeline of the storm and Respondent’s submission, strongly suggests that Respondent’s untimely submission uses the storm as an excuse. This is especially so because Respondent’s counsel made no attempt to seek a suspension or adjournment because of extenuating personal circumstances, or otherwise communicate on this matter in any way since June 6. *See* December Shapiro Aff. ¶ 9. If the Board accepts Respondent’s excuse, the Board must also accept Respondent’s statement in its affirmation that Respondent’s responses were “finalized” on November 5, *see* McCallion Affirmation ¶ 2. The “finalized” responses should have complied with the Order, which clearly and simply required Respondent to fully respond to Petitioner’s discovery requests, due at the end of July. Even accepting Respondent’s late response, there is no excuse for Respondent’s incomplete response.

Despite its recent filing, the fact remains that Respondent has still not provided its initial disclosures and has not provided responses to Petitioner's Interrogatories, in direct violation of the Board's Order. *See* December Shapiro Aff. ¶ 9. Clearly, with its full responses now more than three-months overdue, Respondent has still not made a good faith attempt to provide a complete response. Respondent should not be given additional time to submit responses as there have been plenty of opportunities to do so already and Respondent has not complied with the Board's Order. As a result, sanctions in the form of judgment are appropriate under Fed. R. Civ. P. 37(b)(2)(A)(vi), 37 C.F.R. § 2.120(g), and TBMP § 527.01(a).

CONCLUSION

For the reasons set forth above, Tech Data requests an order for an entry of judgment sustaining the cancellation.

Dated: New York, New York
December 6, 2012

Respectfully submitted,

MOSES & SINGER LLP

By: 

Alan Blum

Deborah L. Shapiro

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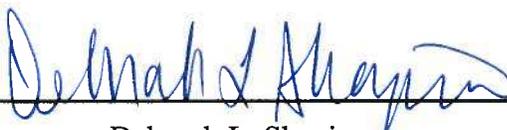
Fax: 212-554-7700

Attorneys for Petitioner Tech Data Corporation

CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2012, I caused a true copy of Petitioner's Reply to Respondent's Affirmation Responding to Tech Data's Motion for Entry of Sanctions in the Form of Entry of Judgment to be served on counsel for Respondent StreamOne LLC, by sending same via first class mail to the following address:

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017



Deborah L. Shapiro

responses to Tech Data's First Set of Requests for Production of Documents and Things ("Document Requests") and First Set of Interrogatories ("Interrogatories"), which had been served on June 26, 2012.

3. As the record shows, Respondent did not respond to the Motion to Compel Discovery and the Board granted the Motion as conceded in its Order of October 22, 2012.

4. The Order allowed Respondent until Thursday, November 8, 2012, to provide its initial disclosures and responses to the Document Requests and Interrogatories. Having received none of the required responses nor any other communication from Respondent or its counsel, on Monday, November 12, 2012, I filed a Motion for Entry of Sanctions in the Form of Entry of Judgment, on behalf of Tech Data.

5. On November 20, 2012, I received service of an Affirmation, dated November 16, 2012, with purported responses to Tech Data's Document Requests and documents labeled as Exhibits A-I. No responses to the Interrogatories were included with the filing, nor were there any initial disclosures.

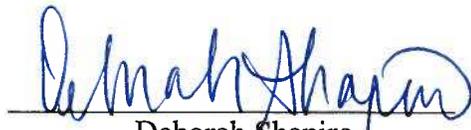
6. I appreciate the issues created by the October 29th storm, especially since my firm has its offices in New York City. However, it was well-known that the storm was coming and there was no doubt its impact could be severe. See the New York Times article of October 28, 2012, *Sharp Warnings as Hurricane Churns In*, by James Barron, attached as Exhibit A. I note that Hurricane Sandy hit the New York/New Jersey area on Monday, October 29, 2012, making landfall at Atlantic City, New Jersey at about 8:00 p.m., not on November 5 as set forth in Respondent's November 16 Affirmation. See the

New York Times article of October 29, 2012, *Storm Barrels Through Region, Leaving Destructive Path*, by James Barron, attached as Exhibit B.

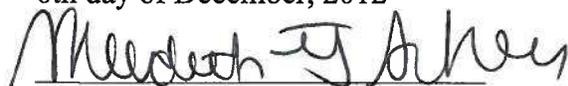
7. Another storm, a Northeaster, came to the region Wednesday, November 7, bringing a few inches of rain and snow. See the New York Times article of November 7, 2012, *Northeaster Adds to Misery, Dumping Rain and Snow*, by James Barron, attached as Exhibit C.

8. Considering the timeline of the storm's progress and the subsequent Nor'easter, there is a disconnect between the timeline of the storm and Respondent's representation that Hurricane Sandy knocked out power on the evening of November 5. By Monday, November 5, the focus was on the clean-up effort, Election Day, and the coming Nor'easter. See the New York Times articles, *Officials Rush to Find Ways for the Storm-Tossed to Vote*, November 5, 2012, by David M. Halbfinger, Thomas Kaplan, and Wendy Ruderman, and *Officials Brace as 2nd Storm Threatens New York Region*, November 6, 2012, by James Barron, attached as Exhibit D.

9. To date, Respondent has served no initial disclosures and no responses to Petitioner's Interrogatories. Despite my e-mails and voice mails, I have received no communication from Respondent's counsel since June 6, apart from the Affirmation and the Responses to the Document Requests, dated November 16.


Deborah Shapiro

Sworn to before me this
6th day of December, 2012


Notary Public

MEREDITH G. SCHORR
Notary Public, State of New York
No. 01SC5042007
Qualified in New York County
Commission Expires April 10, 2015

EXHIBIT A

The New York Times

October 28, 2012

Sharp Warnings as Hurricane Churns In

By JAMES BARRON

Hurricane Sandy, a menacing monster of a storm that forecasters said would bring “life-threatening” flooding, churned toward some of the nation’s most densely populated areas on Sunday, prompting widespread evacuations and the shutdown of the New York City transit system.

Officials warned that the hurricane, pushing north from the Caribbean after leaving more than 60 people dead in its wake, could disrupt life in the Northeast for days.

New York went into emergency mode, ordering the evacuations of more than 370,000 people in low-lying communities from Coney Island in Brooklyn to Battery Park City in Manhattan and giving 1.1 million schoolchildren a day off on Monday. The city opened evacuation shelters at 76 public schools.

The National Hurricane Center said it expected the storm to swing inland, probably on Monday evening. The hurricane center reported that the storm had sustained winds of almost 75 miles an hour.

“We’re going to have a lot of impact, starting with the storm surge,” said Craig Fugate, the administrator of the Federal Emergency Management Agency. “Think, ‘Big.’ ”

The subway closing began at 7 p.m. to darken every one of the city’s 468 stations for the second time in 14 months, as officials encouraged the public to stay indoors and worked to prevent a storm surge from damaging tracks and signal equipment in the tunnels. A suspension of bus service was ordered for 9 p.m.

The closing this year seemed more ominous. The shutdown before Tropical Storm Irene last year began at noon on a Saturday, and service resumed before the workweek started on Monday. This time, officials warned, it might be Wednesday before trains were running again.

Another fear in the Northeast was that winds from the storm might knock down power lines, and that surging waters could flood utility companies’ generators and other equipment.

Forecasters said the hurricane was a strikingly powerful storm that could reach far inland. Hurricane-force winds from the storm stretched 175 miles from the center, an unusually wide span, and tropical storm winds extended outward 520 miles. Forecasters said they expected

high-altitude winds to whip every state east of the Mississippi River.

President Obama, who attended a briefing with officials from FEMA in Washington called Hurricane Sandy “a big and serious storm.” He said federal officials were “making sure that we’ve got the best possible response to what is going to be a big and messy system.”

“My main message to everybody involved is that we have to take this seriously,” the president said.

The hurricane center said through the day on Sunday that Hurricane Sandy was “expected to bring life-threatening storm surge flooding to the mid-Atlantic Coast, including Long Island Sound and New York Harbor.”

The storm preparations and cancellations were not confined to New York.

Amtrak said it would cancel most trains on the Eastern Seaboard, and Philadelphia shut down its mass transit system.

In the New York area, the Metropolitan Transportation Authority’s commuter rail lines, which suffered the heaviest damage during Tropical Storm Irene, were suspended beginning at 7 p.m. on Sunday.

New Jersey Transit began rolling back service gradually at 4 p.m., with a full shutdown expected by 2 a.m.

The Staten Island Ferry was scheduled to stop running by 8:30 p.m., PATH trains at midnight.

The nation’s major airlines canceled thousands of flights in the Northeast. The Port Authority of New York and New Jersey, which operates the three major airports in the New York City area, said it expected major carriers to cease operations entirely by Sunday evening. The Coast Guard closed New York Harbor — cruise ships were told to go elsewhere — and the Northeast faced the possibility of being all but shut down on Monday.

Federal offices in the Washington area will be closed; only emergency employees will be on the job. The Washington transit system — its Metrorail subway and its buses — will also be shut down.

The United Nations canceled all meetings at its headquarters in Manhattan.

Broadway shows were canceled on Sunday and Monday, as were performances at Carnegie Hall.

Schools in Baltimore, Boston and Washington called off classes for Monday.

Many public libraries said their reading rooms would be closed for the day, and parks department workers in Central Park told people to leave on Sunday and to stay away until the storm passed.

The New York Stock Exchange, which initially said its trading floor would be open on Monday, decided to close the floor and suspend all trading on Monday. The closing was the first caused by bad weather since Hurricane Gloria in 1985, although the opening bell has been delayed a number of times — once during a blizzard in January 1996 — and the exchange was closed for three days after the Sept. 11 attacks. The Nasdaq exchange also announced it would be closed Monday.

The hurricane center said the surges could reach 11 feet in New York Harbor, Long Island Sound and Raritan Bay in New Jersey — significantly higher than previous forecasts and significantly above the levels recorded during the tropical storm last year.

Forecasters said the water could top 8 feet from Ocean City, Md., to the border between Connecticut and Rhode Island. They predicted the waves would rise to 6 feet on the south shore of Cape Cod.

Hour after hour on Sunday, long before high tide, high waves pounded the dunes that protect the boardwalk in Rehoboth Beach, Del.

And in East Hampton, N.Y., where Mabel Harmon and her neighbors had spent the day tying down patio furniture, the wind was already “blowing like crazy,” she said Sunday afternoon.

Forecasters also warned that rain could saturate the ground and that trees could tumble across roads or onto power lines.

From North Carolina to Connecticut, officials declared emergencies and directed residents to leave areas near the shore.

Delaware ordered coastal communities evacuated by 8 p.m. Sunday.

In New Jersey, gamblers scrambled to play a few last rounds of blackjack before leaving the Atlantic City casinos under orders from Gov. Chris Christie.

He also ordered residents to leave barrier islands from Sandy Hook to Cape May.

In beachfront towns from North Carolina to New Jersey, the surf was spitting, and crews were rushing to build sand walls in places where the beaches had been rebuilt after 2011, when

many places were hit by what was still Hurricane Irene.

In Red Hook, Brooklyn, many residents along the streets closest to New York Harbor were in their basements checking sump pumps.

Gino Vitale, a builder and landlord there, was delivering sandbags piled high in the back of his white Ford pickup truck to tenants along Conover Street, a block from New York Bay.

“We dodged most of it with Irene,” he said, referring to the storm that flooded basements in Red Hook but not much else. “I’m hoping we can do that again.”

For the most part, residents appeared to follow officials’ advice to stock up on bottled water, canned food and flashlights — so much so that stores ran low on batteries. Some gas stations in Connecticut had little gasoline left — no regular, and not much premium.

In a flood-prone neighborhood in Philadelphia, Michael Dornblum did something he did not do during Tropical Storm Irene or earlier storms that brought high water — he put 80-pound sandbags outside his family’s furniture store. In the past, he has lined them up only inside. He put the additional protection in place as employees prepared to lift carpets and sofas off the showroom floor. Some went to a storage area on the second floor.

Con Edison did not provide an estimate of how long customers in the New York City area might be without power if the storm played havoc with its network; by contrast, the parent company of Jersey Central Power and Light warned as long ago as Friday that repairs could take 10 days after the storm passed through. Another utility in New Jersey, the Public Service Electric and Gas Company, said that restoring power could take a week.

Forecasters said Hurricane Sandy could deliver something besides wind and rain: snow. That is because a system known as a midlatitude trough — which often causes severe winter storms — was moving across the country from the west. It was expected to draw in Hurricane Sandy, giving it added energy.

A blast of arctic air is expected to sweep down through the Canadian Plains just as the two storms converge. That could lead to several feet of heavy, wet snow in West Virginia and lighter amounts in Pennsylvania and Ohio that could bring down trees and power lines if already chilly temperatures drop below freezing.

The full moon on Monday could cause even greater flooding, because tides will be at their peak.

The possibility of a higher surge was one reason that Mayor Michael R. Bloomberg of New

York ordered mandatory evacuations in low-lying areas, just as he did before Tropical Storm Irene. One city official said there was particular concern about Con Edison's Lower Manhattan infrastructure, noting that if the storm surge washed over the bulkheads, it could damage the utility's electrical and steam networks. If the surge runs as high as forecast, Con Ed will shut off two electrical networks in Lower Manhattan,

As for the subway shutdown, Mr. Bloomberg said that if the Metropolitan Transportation Authority had not suspended service, but instead had left itself vulnerable to the storm, the city would have risked being without its mass transit network for even longer.

"They do have to make sure that their equipment doesn't get damaged," Mr. Bloomberg said. "Otherwise we would not have subway trains when this is over or buses when it's over."

Joseph J. Lhota, the chairman of the authority, said he expected the transit systems to restore at least some service about 12 hours after the storm ended. But he warned that the city could be without mass transit for as many as two full work days. "I do think Monday and Tuesday are going to be difficult days," Mr. Lhota said.

But while the mayor said schoolchildren could take Monday off, city workers could not: He said that city offices would be open for business.

Reporting on Hurricane Sandy was contributed by Matt Flegenheimer, John Leland, Colin Moynihan, Sharon Otterman, William K. Rashbaum, Marc Santora, Sam Sifton, Nate Schweber, Michael Schwartz, Kate Taylor and Vivian Yee from New York; Angela Macropoulos from Fire Island, N.Y.; Jeff Lebowitz and Michael Winerip from Long Beach, N.Y.; Sarah Maslin Nir from East Hampton, N.Y.; Elizabeth Maker from Milford, Conn.; Kristin Hussey from Stamford, Conn.; Stacey Stowe from Yonkers; Brian Stelter from Rehoboth Beach, Del.; Matthew L. Wald from Washington; and Jon Hurdle from Philadelphia.

EXHIBIT B

The New York Times

October 29, 2012

Storm Barrels Through Region, Leaving Destructive Path

By **JAMES BARRON**

Hurricane Sandy battered the mid-Atlantic region on Monday, its powerful gusts and storm surges causing once-in-a-generation flooding in coastal communities, knocking down trees and power lines and leaving more than five million people — including a large swath of Manhattan — in the rain-soaked dark. At least seven deaths in the New York region were tied to the storm.

The mammoth and merciless storm made landfall near Atlantic City around 8 p.m., with maximum sustained winds of about 80 miles per hour, the National Hurricane Center said. That was shortly after the center had reclassified the storm as a post-tropical cyclone, a scientific renaming that had no bearing on the powerful winds, driving rains and life-threatening storm surge expected to accompany its push onto land.

The storm had unexpectedly picked up speed as it roared over the Atlantic Ocean on a slate-gray day and went on to paralyze life for millions of people in more than a half-dozen states, with extensive evacuations that turned shorefront neighborhoods into ghost towns. Even the superintendent of the Statue of Liberty left to ride out the storm at his mother's house in New Jersey; he said the statue itself was "high and dry," but his house in the shadow of the torch was not.

The wind-driven rain lashed sea walls and protective barriers in places like Atlantic City, where the Boardwalk was damaged as water forced its way inland. Foam was spitting, and the sand gave in to the waves along the beach at Sandy Hook, N.J., at the entrance to New York Harbor. Water was thigh-high on the streets in Sea Bright, N.J., a three-mile sand-sliver of a town where the ocean joined the Shrewsbury River.

"It's the worst I've seen," said David Arnold, watching the storm from his longtime home in Long Branch, N.J. "The ocean is in the road, there are trees down everywhere. I've never seen it this bad."

In New York, Gov. Andrew M. Cuomo's office said late Monday night that at least five deaths in the state were attributable to the storm. At least three of those involved falling trees. About 7 p.m., a tree fell on a house in Queens, killing a 30-year-old man, the city police said. About the same time, two boys, ages 11 and 13, were killed in North Salem in Westchester County, when a tree fell on the house they were in, according to the State Police.

In Morris County, N.J., a man and a woman were killed when a tree fell on their car Monday evening, The Associated Press reported.

In Manhattan, NYU Langone Medical Center's backup power system failed Monday evening, forcing the evacuation of patients to other facilities.

In a Queens beach community, nearly 200 firefighters were battling a huge blaze early on Tuesday morning that tore through more than 50 tightly-packed homes in an area where heavy flooding slowed responders.

Earlier, a construction crane atop one of the tallest buildings in the city came loose and dangled 80 stories over West 57th Street, across the street from Carnegie Hall.

Soon power was going out and water was rushing in. Waves topped the sea wall in the financial district in Manhattan, sending cars floating downstream. West Street, along the western edge of Lower Manhattan, looked like a river. The Brooklyn-Battery Tunnel, known officially as the Hugh L. Carey Tunnel in memory of a former governor, flooded "from end to end," the Metropolitan Transportation Authority said, hours after Gov. Andrew M. Cuomo of New York ordered it closed to traffic. Officials said water also seeped into seven subway tunnels under the East River.

Joseph J. Lhota, the transit authority chairman, called the storm the most devastating disaster in the 108-year history of the subway system.

"We could be fishing out our windows tomorrow," said Garnett Wilcher, a barber who lives in the Hammells Houses, a block from the ocean in the Rockaways in Queens. Still, he said he felt safe at home. Pointing to neighboring apartment houses in the city-run housing project, he said, "We got these buildings for jetties."

Hurricane-force winds extended up to 175 miles from the center of the storm; tropical-storm-force winds spread out 485 miles from the center. Forecasters said tropical-storm-force winds could stretch all the way north to Canada and all the way west to the Great Lakes. Snow was expected in some states.

Businesses and schools were closed; roads, bridges and tunnels were closed; and more than 13,000 airline flights were canceled. Even the Erie Canal was shut down.

Subways were shut down from Boston to Washington, as were Amtrak and the commuter rail lines. About 1,000 flights were canceled at each of the three major airports in the New York City area. Philadelphia International Airport had 1,200 canceled flights, according to FlightAware, a data provider in Houston. And late Monday night, Mayor Michael R. Bloomberg said cabs had been instructed to get off New York City roads.

A replica of the H.M.S. Bounty, a tall ship built for the 1962 movie "Mutiny on the Bounty" starring

Marlon Brando and used in the recent “Pirates of the Caribbean” series, sank off the North Carolina coast. The Coast Guard said the 180-foot three-masted ship went down near the Outer Banks after being battered by 18-foot-high seas and thrashed by 40-m.p.h. winds. The body of one crew member, Claudene Christian, 42, was recovered. Another crew member remained missing.

Delaware banned cars and trucks from state roadways for other than “essential personnel.”

“The most important thing right now is for people to use common sense,” Gov. Jack Markell said. “We didn’t want people out on the road going to work and not being able to get home again.”

By early evening, the storm knocked out power to hundreds of thousands of homes, stores and office buildings. Consolidated Edison said that as of 1:30 a.m. Tuesday, 634,000 customers in New York City and Westchester County were without power. Con Edison, fearing damage to its electrical equipment, shut down power pre-emptively in sections of Lower Manhattan on Monday evening, and then, at 8:30 p.m., an unplanned failure, probably caused by flooding in substations, knocked out power to most of Manhattan below Midtown, about 250,000 customers. Later, an explosion at a Con Ed substation on East 14th Street knocked out power to another 250,000 customers.

In New Jersey, more than two million customers were without power as of 1:30 a.m. Tuesday, and in Connecticut nearly 500,000.

President Obama, who returned to the White House and met with top advisers, said Monday that the storm would disrupt the rhythms of daily life in the states it hit. “Transportation is going to be tied up for a long time,” he said, adding that besides flooding, there would probably be widespread power failures. He said utility companies had lined up crews to begin making repairs. But he cautioned that it could be slow going.

“The fact is, a lot of these emergency crews are not going to get into position to start restoring power until some of these winds die down,” the president said. He added, “That may take several days.”

Forecasters attributed the power of the storm to a convergence of weather systems. As the hurricane swirled north in the Atlantic and then pivoted toward land, a wintry storm was heading toward it from the west, and cold air was blowing south from the Arctic. The hurricane left more than 60 people dead in the Caribbean before it began crawling toward the Northeast.

“The days ahead are going to be very difficult, Gov. Martin O’Malley of Maryland said. “There will be people who die and are killed in this storm,” he said.

Alex Sosnowski, a senior meteorologist with AccuWeather, said potentially damaging winds would continue on Tuesday from Illinois to the Carolinas — and as far north as Maine — as the storm

barreled toward the eastern Great Lakes.

Mr. Cuomo, who ordered many of the most heavily used bridges and tunnels in New York City closed, warned that the surge from Hurricane Sandy could go two feet higher than that associated with Tropical Storm Irene last year. The PATH system, buses and the Staten Island Ferry system were also suspended.

Mr. Lhota, the chairman of the Metropolitan Transportation Authority, has said he expected to restore at least some service about 12 hours after the storm ended. But possible flooding within the subway system could prevent a full-scale reopening.

The storm headed toward land with weather that was episodic: a strong gust of wind one minute, then mist. More wind. Thin sheets of rain dancing down the street. Then, for a moment, nothing. The sky lightened. Then another blast of rain. Then more wind.

The day brought a giddiness to schoolchildren who had the day off and to grown-ups who were fascinated by the rough, rising water. Some went surfing, discounting the danger. Felquin Piedra, 38, rode his Jet Ski from Queens to Lower Manhattan.

“I love the waves,” Mr. Piedra yelled from New York Harbor. “The water is warm. I’ve jumped in several times.”

But even when landfall was still hours away, there was no holding back the advance guard of the storm — fast-moving bands of rain and punishing winds.

It added up to devastation. Driving through places like Pompton Plains, N.J., late Monday afternoon was like an X-Games contest for drivers. They had to do tree-limb slaloms on side streets and gunned their engines anxiously as they passed wind funnels of leaves swirling on highways.

On City Island, off the Bronx mainland, Cheryl Brinker sprayed “Sandy Stay Away” on her boarded-up art studio, expanding a collage she started during Tropical Storm Irene last year. But by midafternoon, nearby Ditmars Street was under as much as five feet of water and Steve Van Wickler said the water had cracked the cement in his cellar. “It’s like a little river running in my basement,” he said. “There are cracks and leaks everywhere.”

In some places, caravans of power-company trucks traveled largely empty roads; Public Service Electric and Gas said that 600 line workers and 526 tree workers had arrived from across the country, but could not start the repairs and cleanup until the wind had subsided, perhaps not until Wednesday.

They will see a landscape that, in many places, was remade by the storm. In Montauk, at the end of Long Island, a 50-seat restaurant broke in half. Half of the building floated away and broke into

pieces on the beach.

The 110-foot-tall lighthouse at Montauk Point — the oldest in the state, opened in 1796 — shuddered in the storm despite walls that are six feet thick at the base. The lighthouse keeper, Marge Winski, said she had never felt anything like that in 26 years on the job.

“I went up in tower and it was vibrating, it was shaking,” she said. “I got out of it real quick. I’ve been here through hurricanes, and nor’easters, but nothing this bad.”

EXHIBIT C

The New York Times

November 7, 2012

Northeaster Adds to Misery, Dumping Rain and Snow

By JAMES BARRON

A northeaster threatened to unravel progress made since Hurricane Sandy ravaged the New York area, delivering a second angry serving of howling wind and high water on Wednesday in places where misery and frustration had yet to recede.

The northeaster, a chilly brew of rain and wet snow blown in by gusts almost as powerful as those recorded during the hurricane, arrived with the dismaying potential to disrupt efforts to bring life back to normal from the Jersey Shore to the East End of Long Island.

In New Jersey, Gov. Chris Christie warned that the northeaster could leave many people in the dark again, only a few days after their power had been restored. “I can see us actually moving backwards,” he said in a news conference on Long Beach Island, which suffered some of the heaviest damage in the storm last week. The barrier island had reopened to residents, but as the northeaster closed in, the governor said he was cutting off access again.

The storm, which covered cars and trees in the region in a coat of white, brought down power lines faster than repair crews could keep up, and fierce winds and blowing snow threatened to drive the crews off the job. By about 5 p.m., the northeaster had knocked out electricity to roughly 13,000 Consolidated Edison customers. All told, about 77,000 Con Edison customers had no power on Wednesday evening, up from about 64,000 earlier in the day, according to the company’s Web site.

The numbers also went up on Long Island. The Long Island Power Authority began the day saying that 184,000 customers still lacked power. By day’s end, the total was 199,000.

About 151,000 Public Service Electric and Gas customers in New Jersey had no power before the new storm arrived. The company said the storm caused an additional 90,000 power failures statewide. By late Wednesday, Jersey Central Power and Light was reporting more than 219,000 customers without electricity.

About 6:40 p.m., the Long Island Rail Road temporarily suspended departures from Pennsylvania Station in Manhattan and Atlantic Terminal in Brooklyn after a series of storm-related problems on several of its lines. But later, limited service was restored.

The storm also snarled traffic in some areas, particularly along the Taconic State Parkway in

Putnam and Westchester Counties, where the State Police said there had been multiple accidents.

As snow from the northeaster made roads slippery and sloppy, the police said the death toll in New York City from the hurricane had risen to 41 with the death of William McKeon, 78, at Jamaica Hospital Medical Center in Queens. Paul J. Browne, the Police Department's chief spokesman, said Mr. McKeon was found on Tuesday "at the bottom of a pitch-black stairwell that was still wet and covered with sand" at 106-20 Shore Front Parkway in Rockaway, Queens. His head was bleeding and he was unconscious and unresponsive, Mr. Browne said, adding that the medical examiner's office determined on Wednesday that Mr. McKeon's injuries were storm-related.

The northeaster was another storm with an impossible-to-miss footprint on the weather maps. Its white swirl, smaller than the hurricane's, looked ferocious. Road crews feared it would bring annoying slush and, later on, treacherous ice to hard-luck places where debris from the hurricane was still being cleared away.

"This is the last thing we needed when we just started making progress," said Nicole DeGorter, 19, a college student and lifelong resident of Gerritsen Beach, Brooklyn, one of the communities that city officials were most concerned about. She said that the hurricane had driven her from her family's house, where eight feet of water was churning on top of three feet of sand in the basement, and that she had moved into an uncle's apartment nearby with five other people and four dogs.

"It feels like it can't get any worse," Ms. DeGorter said at midday Wednesday, as the cold rain started to fall.

Mayor Michael R. Bloomberg said low-lying areas had survived high tide on Wednesday afternoon without being inundated all over again, and a National Weather Service forecaster, David Stark, said the high tide had "come in under what we had initially expected, which is a good thing."

But the mayor and other officials remained concerned about areas the hurricane had walloped. "The difference" between last week and this week, Mr. Bloomberg said, "is the barriers of sand or rock that were there before are not there."

The Weather Service's coastal flood warning for New York Harbor remained in effect as the northeaster gained force, as did a wind warning for the city, Long Island and coastal Connecticut. But Mr. Stark said the surprise was the snow. He said two inches had been reported in Bayside, Queens, and 3 1/2 inches in Armonk, N.Y., in Westchester County. He said reports from inland sections of Fairfield County and New Haven County in Connecticut had mentioned three to five inches. Later, parts of Westchester reported as much as seven inches of snow.

It was an ominous mix in places like Breezy Point, Queens, where there was a fear of the streets, not just because of the northeaster, but also because of unattended homes and stores that could

tempt thieves. Beach Channel Drive in Rockaway was dotted with police checkpoints to ward off potential looters, an officer said.

Ian Allyn, who was repairing a hurricane-battered drugstore while the first floor of his house sat in ruins, said, "I don't think I can take another storm right now."

Reporting was contributed by J. David Goodman, Andy Newman, Sarah Maslin Nir, Michael Schwirtz and Daniella Silva.

EXHIBIT D

The New York Times

November 5, 2012

Officials Rush to Find Ways for the Storm-Tossed to Vote

By DAVID M. HALBFINGER, THOMAS KAPLAN and WENDY RUDERMAN

Elected officials in New York and New Jersey scrambled Monday to enable displaced citizens to vote in the election on Tuesday, relocating scores of coastal polling places that had become unusable because of power failures, flooding or evacuations.

New Jersey and New York both said they would allow voters uprooted by Hurricane Sandy to cast provisional ballots anywhere in their states.

“Just because you’re displaced doesn’t mean you should be disenfranchised,” Gov. Andrew M. Cuomo of New York said in announcing the step on Monday.

But the provisional ballots would, in many cases, allow residents to vote only in statewide contests and in the presidential election, in which President Obama is heavily favored in both states. The ballots could not be used in local and Congressional races, which in some areas are far more competitive.

New Jersey went further, saying it will let displaced voters vote by fax or e-mail. Ballot-integrity advocates warned that this raised risks of fraud by hackers, or mischief by partisan local officials because electronic ballots lack secrecy and are not safeguarded by witnesses.

Across the storm-damaged region, bleary-eyed, disheveled residents drove long distances and waited in long lines at government offices to cast early ballots Monday, and many said voting felt like an important step back toward normalcy.

In New York, there are very tight Congressional or legislative races in Queens, on Staten Island, on Long Island and in Westchester County, all of which were hit hard by the storm. Candidates in those races went to great lengths to ensure that their supporters could surmount the extraordinary obstacles to voting this year.

On Staten Island, the Congressional campaign of Mark Murphy, a Democrat running against Representative Michael G. Grimm, a Republican, sent volunteers to gasoline lines across the borough with iPhones to help idling voters figure out where they should go on Tuesday. Mr. Grimm’s campaign said it was recruiting volunteers with full gas tanks to transport to the polls voters whose cars were destroyed or had no gas.

Many voters already confronted confusion and signs of chaos as they sought to vote Monday, or to

figure out where they could vote on Tuesday.

“They told me I can register today, but I can’t vote in this election,” said Helen Colon, 69, a retired woman who journeyed to the Staten Island’s eastern shore to register her disabled husband to vote, after trying but failing to do so online. “At least that’s what I think they said.”

Local and state officials were plainly having trouble conveying information about Election Day obstacles and remedies. New Jersey officials could not say how many polling places had been moved — though they said fewer than 100 still needed “some resolution.” The outdated Web site for hard-hit Ocean County directed residents of Seaside Heights to that shore town’s flooded, unelectrified, empty community center.

In New York City, Mayor Michael R. Bloomberg worried aloud that the relocation of polling places could depress turnout — since, he said, motivating people to cast their ballots was a chore even in an ordinary election year.

“The question is: Will they make the effort?” he said.

Polling places require power to run their electronic machines. As of Monday night, more than 100 polling places in New York State had been changed, including about 60 in the city. Most were in Brooklyn and Queens; in two cases, in the Rockaways and the Throgs Neck section of the Bronx, the city was setting up polling places in tents powered by generators and outfitted with portable heaters.

The city’s Board of Elections also arranged for shuttle buses that would run every 15 minutes to ferry voters to and from polling places in three areas hit particularly hard by the storm: the Rockaways, Coney Island and Staten Island.

Juan Carlos Polanco, a commissioner on the Board of Elections, said it had done everything in its power to publicize the new locations of polling places.

“We want New Yorkers to be patient tomorrow,” Mr. Polanco said. “Elections are hard enough to run as it is.”

But the board has a troubled track record, even when elections are not preceded by hurricanes. In 2010, computer malfunctions and delayed openings of polling places led Mr. Bloomberg to pronounce the board’s handling of the election a “royal screw-up.” In June, the five-way Democratic primary for Representative Charles B. Rangel’s seat took weeks to be counted.

Local elected officials were not optimistic about Tuesday. Councilwoman Gale A. Brewer, a Manhattan Democrat, said she had heard from utility workers scheduled to work 12-hour shifts on Election Day who had no idea how they were supposed to vote. And Councilman Jumaane D. Williams, a Brooklyn Democrat, questioned why thousands of voters taking refuge at evacuation

shelters would not be able to cast provisional ballots at their shelters.

Mr. Williams said, "My guess is if you don't have your house, you have no place to live, you may not have food, this is probably not at the top of your list of things to do."

In Ocean County, officials took extra steps to allow displaced residents to vote. They sent a mobile voting bus to shelters there and in adjacent Burlington County. They also sought to address the problem of provisional ballots by printing 50,000 generic ballots and allowing voters to fill in the names of their local candidates.

For candidates in tight races, the effort to get voters to the polls was both frantic and delicate.

On Long Island, volunteers for Randy Altschuler, the Republican challenging Representative Timothy H. Bishop, a Democrat, called voters to make sure they knew that the election was still taking place and to offer rides. But every conversation began with a question about whether the voters needed help.

"It's really a totally different script," said Diana Weir, Mr. Altschuler's campaign manager.

Many barrier-island voters forced from their homes seemed to clutch at the chance to vote as if it were a memento salvaged from the flotsam of their pre-storm lives.

Justine Fricchione, 29, of Lavallette, N.J., voted at the county building in Toms River on Monday, she said, because without television, Internet or a charged cellphone, she had not been able to find out where to go on Election Day. She was forced to move because her home was severely damaged, and then again when her grandmother's house lost power. But as the daughter of a onetime Jersey City councilman, she said, she was not going to be deterred.

"It's your right to vote," she said. "You figure out how to get there, and you just do it."

The New York Times

November 6, 2012

Officials Brace as 2nd Storm Threatens New York Region

By JAMES BARRON

Little more than a week after Hurricane Sandy whipped the New York area with brutal winds and a record storm surge, officials mobilized for a northeaster that threatened to deliver more of the same, though in smaller amounts, along with wet snow in places where frustration continued to run high.

More than 600 residents of three nursing homes and an adult care center in the Rockaways, in Queens, were being evacuated on Tuesday ahead of the northeaster, according to state and city health officials.

The city also ordered construction work halted from noon Wednesday to 7 a.m. Thursday because gusts of wind could hit 60 miles an hour as the northeaster closes in. Parks and playgrounds were also ordered closed for 24 hours starting at noon Wednesday amid concern that trees that took a beating last week were more likely to topple this time around.

On Tuesday, a National Guard truck carrying Guard members involved in the storm relief effort struck and killed an 82-year-old man on Canal Street in Chinatown, the authorities said. The man, who was not immediately identified by the police, suffered “severe body trauma” after he was hit by the truck, one of more than 600 vehicles that the New York National Guard has deployed to storm-struck areas of the state.

He was pronounced dead at New York Downtown Hospital shortly after the accident, which occurred around 1:25 p.m. near Centre Street, the police said.

The accident came as a weary New York continued cleaning up, finding temporary homes for some, temporary office space for others and temporary classrooms for some schoolchildren.

The city’s public schools, which were closed for Election Day, were to reopen on Wednesday. Most students returned on Monday, some to schools that had no heat, but those from several dozen schools that had sustained damage or were being used as shelters were told not to return until Wednesday.

The city schools chancellor, Dennis M. Walcott, toured two schools on Tuesday that will take in students from damaged schools. He commended them for their coordination and

cooperation even as he acknowledged that transportation would be tricky on Wednesday.

“We’re squeezing in new busing routes within a very short period of time, which would normally take months to put in place,” he said, “and so I’ve asked for patience from our school population, especially our parents.”

And there were new signs that last week’s storm damage was worse than had been thought. Employees at Bellevue Hospital Center, which evacuated hundreds of patients after water gushed into the basement, said it went on lockdown Tuesday because of possible structural damage.

A spokesman, Ian Michaels, said the hospital was in “cleanup and restoration mode” and was assessing how the building had fared in the storm. But he insisted there was no structural damage “that we are aware of.”

Gas lines were shorter in New Jersey, but drivers said they remained stubbornly long in parts of Manhattan and Brooklyn and on Long Island, and federal energy officials estimated that no more gas stations had fuel on Tuesday than on Monday.

The waits were unpredictable at a Hess station at 44th Street and 10th Avenue in Manhattan, where the gas line had stretched for 30 blocks over the weekend. Fritz Petit-Homme, a Brooklyn cabdriver, said on Tuesday that a day earlier he had waited only 45 minutes to fill up before beginning a 12-hour shift.

On Tuesday morning, the station was tapped out. But Mr. Petit-Homme decided to wait with dozens of other drivers until the next fuel tanker rolled in.

“It’s better to stay in line than to go,” said Mr. Petit-Homme.

Utility crews were at work across the area again, and Consolidated Edison reported slightly fewer than 90,000 customers were still in the dark on Tuesday, about half in the city and half in Westchester County. The Long Island Power Authority said 190,000 customers did not have power. In New Jersey, Public Service Electric and Gas said it still had about 227,000 customers waiting to get electricity back.

Mayor Michael R. Bloomberg said the northeaster would bring a two- to four-and-a-half-foot surge in water levels during Wednesday’s high tides, at roughly 1 p.m. and midnight — less than the record surge that Hurricane Sandy drove ashore, but enough to reflood low-lying coastal neighborhoods.

The rain was expected to start on Wednesday and to last into Thursday. Some forecasters said

that as the northeaster swirled up the Atlantic Coast, it could follow a different course and direct less fury on the areas that Hurricane Sandy devastated.

Still, the National Weather Service issued a coastal flood warning for New York Harbor and a wind warning for New York City, Long Island and coastal Connecticut.

“There is still the potential for some storm surge to increase the tide levels on the South Shore of Long Island,” said David Stark, a meteorologist with the Weather Service, “but not anything near what we saw with the last storm.”